

BEFORE THE SOUTH CAROLINA STATE BOARD OF PSYCHOLOGY EXAMINERS

In the Matter of:

ANDREW B. McGARITY, Ph.D.

License #695,

Respondent.

FINAL ORDER

This matter came before the Board of Psychology Examiners (the Board) for hearing on September 19, 2003, as a result of the Notice and Formal Accusation which was served upon the Respondent and filed with the Board. The hearing was held pursuant to S.C. Code Ann. §40-55-130 (1976), as amended, to hear the charges alleged in the Formal Accusation and determine if the Respondent's license to practice psychology should be revoked, suspended, or otherwise modified as provided by law. Patrick D. Hanks, Esquire, represented the State. F. Glenn Smith, Esquire, represented the Respondent.

The Respondent was charged with violation of S.C. Code Ann. §40-55-150(A)(8) (Supp. 1998 and 1999) and S.C. Code of Regulation. No. 100-4(C)(4) and (6) (Supp. 1998 and 1999).

FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the Board finds the facts of the case to be as follows:

1. The Respondent is a clinical psychologist duly licensed to practice in the State of South Carolina, and was so licensed at all times relevant to the allegations in the Formal Accusation.

2. The State filed a Formal Accusation accusing the Respondent of failing to follow American Psychological Association (APA) guidelines when he conducted a custody evaluation incident to a divorce proceeding. Although the Respondent acknowledged in his response to the initial accusations that the custody evaluation in question was conducted "with the experience obtained through the American Psychological Association principles", he also asserted that the Board could not charge him with failing to follow guidelines that have not been formally adopted by the Board. An expert in the area of custody evaluations testified for the State. According to the expert's testimony, it is generally accepted within the profession that APA guidelines are employed when conducting custody evaluations. The Board agrees with the State's expert that, as there are no other guidelines for conducting evaluations, it is generally accepted that the APA guidelines are controlling. A copy of the Respondent's response, dated February 7, 2001, was placed in evidence and provided to the Board.

3. The State's expert additionally testified that the data gathered by the Respondent in conducting the custody evaluation was severely lacking in information necessary to conduct a competent evaluation. He testified about numerous specific deficiencies in the evaluation, the most egregious being the Respondent's failure to have any contact with the children. The Respondent gave two explanations in his testimony for not making contact with the children. One being the children's young age, at the time of the evaluation the children were ages two and three years, and the other being that he was not paid to evaluate the children. He also testified that he did not feel qualified to conduct an evaluation with children that young in age. However, the expert testified that the young ages of the children was more of a compelling reason for the Respondent to have contact with them, if not for an evaluation, to observe the interaction between each parent and the children before making a definitive recommendation on which parent should be awarded custody. The Board agrees with the expert's testimony as it relates to the deficiencies in the custody evaluation conducted by the Respondent.

4. The Board notes the Respondent's objection to the expert's use of the deposition of one of the parents involved in the custody case in formulating his opinion because the deposition was taken after the Respondent completed the evaluation. However, the expert testified that had he not been provided with the deposition, he still would have reached the same conclusion in the case since the deposition, for the most part, only highlighted the deficiencies in the data collected by the Respondent. He also testified that there was nothing in the Respondent's office records or the evaluation that indicated the Respondent even inquired about much of the relevant information that was in the deposition. It was the expert's opinion that the custody evaluation performed by the Respondent failed to meet the generally accepted standard of care normally expected of clinical psychologists practicing in the State of South Carolina. The Board agrees with the expert's opinion in this case.

CONCLUSIONS OF LAW

Following careful consideration of the facts in this matter, the Board finds and concludes as a matter of law that:

1. The Board has jurisdiction in this matter and, upon finding that a licensee has violated any of provisions of S.C. Code Ann. §40-55-130, supra, has the authority to order the revocation, suspension or otherwise restrict the license or permit of the psychologist, publicly or privately reprimand the holder of a license or permit, or take other reasonable action short of revocation or suspension, such as requiring the licensee to undertake additional professional training subject to the direction and supervision of the Board or imposing restraint upon the professional practice of the licensee as circumstances warrant until the licensee demonstrates to the Board adequate professional competence. Additionally, the Board may impose a fine not to exceed five hundred dollars, and the reasonable costs of the investigation and prosecution of the disciplinary action.

2. The Respondent has violated S.C. Code Ann. §40-55-150(A)(8) (1976), as amended, in that the Respondent has violated the following Code of Ethics adopted by the Board:

(A) Regulation No. 100-4(C)(6) in that the Respondent conducted a child custody evaluation and rendered a formal professional opinion in the case without gathering sufficient information upon which to base his opinion.

3. The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for the continuing services of qualified psychologists against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The sanction imposed is designed not to punish the Respondent, but to protect the life, health, and welfare of the people at large.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. The Respondent shall be, and hereby is, publicly reprimanded.

2. The Respondent's license shall be placed in a probationary status for a period of six (6) months, and during the probationary period the Respondent's practice shall be under the supervision of a licensed clinical psychologist who shall be selected by the Board. During the supervisory period, the Respondent shall meet with the supervising psychologist on a bi-monthly basis for a review of his practice. At the conclusion of the probationary period, but prior to termination of the probation, the Respondent and the supervising psychologist shall be required to make an appearance before the Board. All costs associated with the supervision of Respondent's practice shall be borne solely by the Respondent, and shall be paid within thirty (30) days of Respondent's receipt of an invoice.

3. The Respondent shall promptly advise the Board in writing of any changes in address, employment, practice, professional status, or compliance with this final order. Correspondence and notices mentioned hereby shall be directed to:

South Carolina Department of Labor, Licensing
and Regulation
State Board of Examiners in Psychology
Post Office Box 11329
Columbia, South Carolina 29211

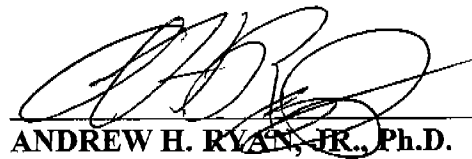
4. The Respondent shall cooperate with the Board, its attorneys, investigators, and other representatives in the investigation of the Respondent's practice and compliance with the provisions of this final order. It is the Respondent's responsibility to demonstrate compliance with each and every provision of this final order. Failure by the Respondent to abide by any of the aforementioned conditions of his probation, or if the Respondent is otherwise unable to practice with reasonable skill and safety to patients, may warrant the immediate temporary suspension of his license to practice in this State pending hearing into the matter and until further order of the Board.

5. This final order shall take effect upon the service of the order on the Respondent or Respondent's counsel.

AND IT IS SO ORDERED.

STATE BOARD OF PSYCHOLOGY EXAMINERS

BY:



ANDREW H. RYAN, JR., Ph.D.
Chairman of the Board

October 21, 2003

RECEIVED

NOV 24 2003

MOTION AND PETITION

FOR A STAY OF THE APPLICATION

AND ENFORCEMENT OF THE

FINAL ORDER


The Board admits in its findings of fact that there are “...no other guidelines for conducting evaluations.” Therefore, the Board itself recognizes the absence of a statutory or regulatory standard for the conduction of custody evaluations. The Board also based its decision in whole or part upon a deposition taken after Dr. McGarity submitted his report and which was never made known to him. However, the Board, erroneously, permitted the deposition to be

entered into evidence and used as a basis for the evidentiary record and, in part, justified its decision based upon that deposition. To hold Dr. McGarity responsible for information obtained in a deposition taken post-report and never made known to him is capricious, arbitrary, and unreasonable.

There are no findings and conclusions in the Final Order as to the enumerated charges. The charges are that Dr. McGarity did not adequately relate psychological functioning to parenting capacities; did not assess the quality of the children's attachments with each parent; nor did he comment on interaction of children with parents. There are no findings or conclusions that relate to any of these charges.

The penalty is punitive. It is inconsistent with the Board's history in that the Board has consistently issued letters of caution or letters of warning in all child custody evaluation cases that have been decided by it. There is no basis for a deviation in the sanctions imposed by reason of the facts in this case. There is no compelling reason to punish Dr. McGarity at the level of severity with which he is now being treated.

All of these reasons justify a stay of the imposition of the Final Order until such time as Dr. McGarity has had an opportunity to appeal. Further, if the Board issues a Stay Order it will alleviate additional expenses and costs on behalf of Dr. McGarity and on behalf of the State both of which, necessarily, will have to appear through their lawyers in the Circuit Court or before an Administrative Law Judge since Dr. McGarity, of necessity, will seek a stay in one or both of those forums.


F. GLENN SMITH
ATTORNEY FOR

Andrew B. McGarity, Ph.D.
1510 Calhoun Street, Second Floor
Columbia, South Carolina 29201
Telephone No.: (803) 771-6107
Facsimile No.: (803) 799-8249

November 21st, 2003

Columbia, South Carolina